



THE PEACE CORPS

22 CFR Part 313

RIN 0420-AA33

Peace Corps Guidance Documents

AGENCY: The Peace Corps.

ACTION: Final rule.

SUMMARY: This final rule sets forth internal Agency policies, processes and procedures governing development, review and clearance of guidance documents.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Guidance Document Procedures

This final rule responds to Executive Order 13891 titled: “Promoting the Rule of Law through Improved Agency Guidance Documents,” (October 9, 2019) in which Federal agencies are required to set forth policies, processes and procedures for issuing guidance documents.

These policies, processes and procedures apply to all guidance documents which are a statement of agency policy or interpretation concerning a statute, regulation, or technical matter within the jurisdiction of the Agency intended to have general applicability and future effect on the behavior of the public, but not intended to have the force or effect of law and not otherwise required by statute to satisfy the rulemaking procedures of the Administrative Procedure Act.

This final rule sets forth Agency policies, processes and procedures regarding the development, review and clearance of guidance documents. Whenever a guidance document is determined to be “significant,” this will include legal review, review by the Agency’s Senior Policy Committee and, following review and approval by the Office of Management and Budget, Office of Information and Regulatory Affairs (OMB/OIRA), review and approval by the Director of the Peace Corps. Prior to issuance by the Agency, all guidance documents must be written in plain English and not impose substantive legal requirements above and beyond statute or regulation. If a guidance document purports to describe, approve, or recommend specific conduct that goes beyond what is required by existing law, it must include a clear and prominent statement that the contents of the guidance document do not have the force and effect of law and are not meant to bind the public. The procedures for the development and review of guidance documents can be found at 22 CFR 313.1 and 313.4.

This final rule also incorporates other policies and procedures, such as when guidance documents are subject to notice and an opportunity for public comment and how they will be made available to the public after issuance. See 22 CFR 313.3. These procedures are intended to ensure that the public has access to guidance documents issued by the Agency and a fair and sufficient opportunity to comment on them when appropriate and practicable.

Administrative Procedure

Under the Administrative Procedure Act, an agency may waive the normal notice and comment procedures if the action is a rule of agency organization, procedure, or practice. See 5 U.S.C. 553(b)(3)(A). Since this final rule incorporates into the Code of Federal Regulations existing internal procedures applicable to the Agency’s administrative procedures, notice and comment are not necessary.

Rulemaking Analyses and Notices

A. Executive Order 12866 and Agency Regulatory Policies and Procedures

This rulemaking is not a significant regulatory action under Executive Order 12866. The Agency does not anticipate that this rulemaking will have an economic impact on regulated entities. This is a rule of Agency policy, procedure and practice. The final rule describes the manner in which the Agency handles internally the promulgation and processing of guidance documents.

B. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

C. Regulatory Flexibility Act

Since notice and comment rulemaking is not necessary for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601–612) do not apply.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires agencies to ensure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in the Executive order, and the Agency has determined that this action will not have a substantial direct effect or federalism implications on the States and would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions. Therefore, consultation with the States is not necessary.

E. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Because this rulemaking does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Paperwork Reduction Act

The Agency has determined there are no new information collection requirements associated with this final rule.

G. National Environmental Policy Act

The Agency has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), has determined that the purpose of this rulemaking is to update the Agency’s administrative procedures for guidance documents and does not anticipate the action will have any environmental impacts.

List of Subjects in 22 CFR Part 313

Administrative practice and procedure.

For the reasons set out in the preamble, the Peace Corps adds 22 CFR part 313 to read as follows:

PART 313--GUIDANCE PROCEDURES

Sec.

313.1 General; definition of “guidance documents” covered by this part.

313.2 Guidance documents; required elements.

313.3 Public access to guidance documents.

313.4 Definition of “significant guidance document.”

313.5 Procedures for guidance documents identified as “significant.”

313.6 Notice-and-comment procedures.

313.7 Petition procedures for withdrawal or modification of a guidance document.

313.8 No judicial review or enforceable rights.

Authority: 22 U.S.C. 2501 *et seq.*

§ 313.1 General; definition of “guidance documents” covered by this part.

(a) This part governs Peace Corps (Agency) employees and contractors involved with all phases of issuing Agency guidance documents.

(b) For purposes of this part, the term “guidance document” means a statement of Agency policy or interpretation concerning a statute, regulation, or technical matter within the jurisdiction of the Agency intended to have general applicability and future effect on the behavior of the public, but which is not intended to have the force or effect of law and is not otherwise required by statute to satisfy the rulemaking procedures specified in 5 U.S.C. 553 or 5 U.S.C. 556. The term is not limited to formal written documents and may include, without limitation, letters, memoranda, circulars, bulletins, advisories, as well as video, audio, and web-based formats. *See* OMB Bulletin 07-02, “Agency Good Guidance Practices,” (January 25, 2007) (“OMB Good Guidance Bulletin”).

(c) The following shall not be considered “guidance documents” for purposes of this part:

- (1) Rules exempt from rulemaking requirements under 5 U.S.C. 553(a);
- (2) Rules of agency organization, procedure, or practice;
- (3) Decisions of agency adjudications under 5 U.S.C. 554 or similar statutory provisions;
- (4) Internal executive branch legal advice or legal advisory opinions addressed to executive branch officials;
- (5) Agency statements of specific applicability, including advisory or legal opinions directed to particular parties about circumstance-specific questions (e.g.,

case or investigatory letters responding to complaints, warning letters), notices regarding particular locations or facilities (e.g., guidance pertaining to the use, operation, or control of a government facility or property), and correspondence with individual persons or entities (e.g., congressional correspondence), except documents ostensibly directed to a particular party but designed to guide the conduct of the broader regulated public;

(6) Legal briefs, other court filings, or positions taken in litigation or enforcement actions;

(7) Agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation, including speeches and individual presentations, editorials, media interviews, press materials, or congressional testimony that do not set forth for the first time a new regulatory policy;

(8) Guidance pertaining to military or foreign affairs functions;

(9) Grant solicitations and awards;

(10) Contract solicitations and awards; or

(11) Purely internal Agency policies or guidance directed solely to Agency employees, contractors, volunteers, trainees, or invitees or to other Federal agencies that are not intended to have substantial future effect on the behavior of regulated parties.

(d) The Peace Corps will not cite, use, or rely upon a guidance document that is rescinded, except for the purpose of establishing historical fact. Guidance documents not on an Agency website, as set forth in this part, are considered to be rescinded.

§313.2 Guidance documents; required elements.

Each guidance document proposed to be issued by the Agency shall:

(a) Comply with all relevant statutes and regulation;

(b) Identify or include for each guidance document:

- (1) The term “guidance” or its functional equivalent;
- (2) A unique identifier;
- (3) The issuance date, posting date, and the issuing office within the Agency;
- (4) The activity or entities to which the guidance applies;
- (5) Citations to applicable statutes and regulations;
- (6) A statement noting whether the guidance is intended to revise or replace any previously issued guidance and, if so, sufficient information to identify the previously issued guidance; and
- (7) A summary of the subject matter covered in the guidance document at the top of the document.

(c) Avoid use of mandatory language, such as “shall,” “must,” “required,” or “requirement,” unless the language is describing an established statutory or regulatory requirement or is addressed to Agency’s staff and will not foreclose the Agency’s consideration of positions advanced by affected private parties;

(d) Be written in plain, understandable English; and

(e) Clearly and prominently state that the contents of the document do not have the force and effect of law and are not meant to bind the public, and the document is intended only to provide clarity to the public regarding existing requirements under the law or Agency policies.

§ 313.3 Public access to guidance documents.

The Agency, whenever it issues a guidance document as defined in this part, shall:

(a) Ensure it is identified by the document’s title and date of issuance or revision and is placed on its website within a single, searchable, indexed database, and available to the public;

- (b) Note on an Agency website that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract;
- (c) Maintain and advertise on an Agency website a means for the public to comment electronically on guidance documents that are subject to the notice-and-comment procedures and to submit requests electronically for issuance, reconsideration, modification, or rescission of guidance documents in accordance with § 313.6; and
- (d) Designate the Office of the General Counsel to receive and address any complaints from the public that the Agency is not following the requirements of E.O 13891, entitled “Promoting the Rule of Law through Improved Agency Guidance Documents” (October 9, 2019), or is improperly treating a guidance document as a binding requirement.

§ 313.4 Definition of “significant guidance document.”

(a) A “significant guidance document” is a guidance document that will be disseminated to the general public and that may reasonably be anticipated:

- (1) To lead to an annual effect on the economy of \$100 million or more or adversely affect in a material way the U.S. economy, a sector of the U.S. economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) To create serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency;
- (3) To alter materially the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) To raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in E.O. 12866, as further amended.

(b) The term “significant guidance document” does not include the categories of documents excluded by § 313.1(c) or any other category of guidance documents

exempted by the Agency in consultation with the Office of Management and Budget, Office of Information and Regulatory Affairs (OMB/OIRA).

(c) Significant guidance documents must be reviewed by OMB/OIRA under E.O. 12866 before issuance; and must demonstrate compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in E.O. 12866, E.O. 13563, E.O. 13609, E.O. 13771 and E.O. 13777.

§ 313.5 Procedures for guidance documents identified as “significant.”

(a) Whenever a guidance document is proposed to be issued by the Agency, a copy of the proposed guidance document will be reviewed by the Office of the General Counsel and provided to OMB/OIRA for a “significance” determination pursuant to Executive Order 12866.

(b) Following review and an affirmative “significance” determination by OMB/OIRA pursuant to Executive Order 12866, the guidance document will be reviewed by the Senior Policy Committee which may recommend that it be approved by the Director for issuance as a “significant” guidance document and the Agency may issue the guidance following approval by the Director.

(c) If the guidance document is determined by OMB/OIRA not to be “significant” within the meaning of § 313.4, the Agency or office within the Agency may proceed to issue the guidance.

§ 313.6 Notice-and-comment procedures.

(a) Except as provided in paragraph (b) of this section, any proposed Peace Corps guidance document determined to be “significant” within the meaning of § 313.4 shall be subject to the following notice-and-comment procedures. The Agency shall publish a notification in the Federal Register announcing that a draft of the proposed guidance document is publicly available, shall post the draft guidance document on its website, shall invite public comment on the draft document for a minimum of 30 days, and shall

prepare and post a public response to major concerns raised in the comments, as appropriate, on its website, either before or when the guidance document is finalized and issued.

(b) The requirements of paragraph (a) of this section will not apply to any significant guidance document or categories of significant guidance documents for which the Agency finds, in consultation with OMB/OIRA, that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.

§ 313.7 Petition procedures for withdrawal or modification of a guidance document.

Any member of the public may submit a petition to the Peace Corps requesting the Agency to consider withdrawing or modifying any guidance document. Such requests shall be sent by e-mail to policy@peacecorps.gov or mailed to the Peace Corps, Office of the General Counsel, 1275 First St., NW, Washington, DC 20526. The Peace Corps will respond to a petition within 90 days of receipt by the Agency.

§ 313.8 No judicial review or enforceable rights.

This part is intended to improve the internal management of the Peace Corps. As such, it is for the use of Agency personnel only and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies or other entities, its officers or employees, or any other person.

Dated: November 5, 2020.

Timothy Noelker,
General Counsel.

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